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Case Watch: Royston, Rayzor, Vickery & Williams LLP v. Lopez

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President's Message

We've made it to the end of another successful year! I have been so blessed with your friendship and support this year as president of the Bexar County Women's Bar, and I feel privileged to have served as a steward of this fantastic organization. Looking back on this past year, I am blown away by how much we have accomplished as an organization, none of which would have been possible without the very hard work of our board of directors and the involvement of our members.

Even with everything we've accomplished, there are still a couple of events this month to finish out the year with festive fun! I hope you will renew your membership for 2016 (or have already done so) and join us at J. McLaughlin on December 2 to shop at a discount, enjoy free food and wine, and be entered to win a \$100 shopping spree! And, to finish the year on a really high note, please submit your RSVP to join us at our holiday luncheon on December 11, where we will



present the Children's Bereavement Center with the proceeds of this year's Autumn Affair. We will also collect donations for Literacy San Antonio in the form of new or gently used books or monetary donations. (con'd on p. 9)

Jingle, Jingle . . . Come and Mingle!
 Please join us as we celebrate another fantastic year!

*Bexar County Women's Bar Foundation's
 Annual Holiday Party*

*December 11, 2015
 Noon to 1:00 p.m.*

*Marriott Plaza San Antonio
 555 S. Alamo Street*

Luncheon is \$40 (includes parking)

~You can help spread holiday cheer at the Holiday Party by donating new or gently used books or by making a monetary donation supporting Literacy San Antonio. Receive a free raffle ticket for each donation.~

*RSVP required by November 25
Events@bexarcountywomensbar.org*

Autumn Affair 2015: The Rain Did Not Dampen Our Wings!



Shown above, Autumn Affair Co-Chairs Lisa Alcantar & Greta McFarling

By Lisa Alcantar & Greta McFarling

With much gratitude and appreciation, we would like to thank everyone who made the 2015 Autumn Affair such a success! Whether you served on a committee, sponsored the event, solicited or donated raffle or auction items, volunteered at the event, or simply came out to support the BCWBF and the Children's Bereavement Center, we couldn't have done it without you! The wet and muggy weather at the Veranda in Castle Hills did not stop guests from mingling and enjoying the fabulous food and cocktails while perusing the exciting raffle and balloon prizes. The evening featured a moving presentation by Deb Rich, who recounted the wonderful treatment she and her daughters received at the Children's Bereavement Center after the death of her husband. It was an excellent reminder that our proceeds are going to an important and crucial

cause. We were also proud to recognize this year's Belva Lockwood Award recipients, Sara Dysart and Shari Mao. It was a pleasure to see these accomplished ladies receive such well-deserved recognition. The evening culminated in a rousing live auction! We would be remiss not to specifically thank our auction committee—Shari Mao, Amanda Crouch, Lauren Horne, and Lindsay Riley—who did an amazing job of soliciting and organizing all of the fabulous auction, raffle, and balloon prizes. We would also like to thank

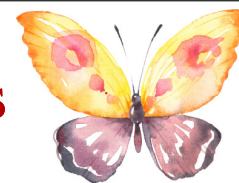
the volunteers from the Women's Law Association at St. Mary's University School of Law—we couldn't have done it without your help!

We are proud the support generated by this year's event will go towards strengthening the programs provided by the Children's Bereavement Center. The proceeds from this year's Autumn Affair will be presented to the Children's Bereavement Center at the BCWBF's Annual Holiday Luncheon on Friday, December 11, at the Marriott Plaza San Antonio. We hope to see you there!

Shown at left: Belva Lockwood Award recipients Shari Mao & Sara Dysart



Thank You Autumn Affair Sponsors



Bexar County Women's Bar would like to thank its generous Sponsors for this year's Autumn Affair, benefitting the Children's Bereavement Center of South Texas.

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MILSA's 3rd Annual Cocoa, Cookies & Mr. Claus Event

You are invited to attend MILSA's 3rd Annual Cocoa, Cookies & Mr. Claus Event on Sunday, December 6 from 1:00 to 4:00 pm at the DoSeum. Skip the lines for Santa and come and go when you feel like it (everyone has different nap times, so this is more like an open house). \$35 per family for members and \$45 for non-members - includes admission all day to the DoSeum, cookies to decorate and an emailed

photograph of your child with Santa - what a deal! Can't wait to see everyone there. Please forward to your friends and colleagues to help us get the word out for our last event of 2015. Please RSVP to vrsull-evans@rbfcu.org so we know how many cookies to bring! Our Santa, photographer and background for the pictures are the BEST in town so make sure to RSVP and mark on your calendar right away!



Third Annual Cocoa, Cookies

and Mr. Clause Party

Sunday, December 6, 2015

1:00 PM to 4:00 PM

The Doseum

2800 Broadway • San Antonio • 78209

JOIN MILSA AS WE DECORATE COOKIES,
TAKE PICTURES WITH SANTA AND ENJOY THE NEW DOSEUM!

\$35 PER FAMILY FOR MEMBERS

\$45 PER FAMILY NON-MEMBERS

THE PRICE INCLUDES ADMISSION TO THE DOSEUM,
AN ELECTRONIC PICTURE WITH SANTA SENT TO YOU BY EMAIL,
COOKIES TO DECORATE AND HOLIDAY CHEER!

Member Spotlight: Patricia Oviatt



What's your current job?

I am an associate at Cokinos, Bosien & Young and handle mainly construction, business, and real estate litigation.

How long have you been a member of the BCWB? What's your best experience thus far?

I initially became a member of the BCWBA when I was President of the Women's Law Association at St. Mary's in 2002 and 2003. They had a mentor/mentee program that I found very valuable so I continued to participate as a mentor after I graduated. I just renewed my membership last month and am excited to learn about news ways to get involved.

Tell us about your morning ritual or daily routine.

Lately it's been coffee, coffee, and more coffee.

What's your favorite moment of your career so far?

It was my first solo jury trial in Kendall County. My client was the sweetest man, just

salt of the earth, who had been defrauded in an oil deal. It was the largest jury verdict at the time (2009) but has since been surpassed.

What was your childhood dream job?

To dance with the American Ballet Theater, but my short legs did not share the same dream.

Guilty Pleasure: What can you not live without?

Chocolate - every day.

What's the best career advice you've offered?

I always tell law students to be kind to your support staff as most everything you did not learn in law school you will need to learn from them!

From the November luncheon, left to right: Lindsay Riley, speaker Jill Mitchell-Thein & Maurleen Cobb



Case Watch: *Royston, Rayzor, Vickery & Williams, LLP v. Lopez*



By Ramona L. Lampley

The Texas Supreme Court effectively gave a “thumbs-up” to attorney-client arbitration agreements this past June in *Royston, Rayzor, Vickery, & Williams, LLP v. Lopez*. 467 S.W.3d 494 (Tex. 2015), reh’g denied (Sept. 11, 2015). The plaintiff, Frank Lopez, hired Royston, Rayzor to represent him in a divorce from his common law wife who had won \$11 million in the lottery. As part of the representation agreement (the employment contract), Lopez agreed to arbitrate any disputes arising out of the attorney-client relationship. But the law firm excluded claims it might have against Lopez for expenses or fees. *Id.* at 498. Lopez later sued Royston, Rayzor, claiming it induced him to accept an inadequate settlement agreement. The firm moved to compel arbitration. *Id.*

The trial court denied the motion to compel arbitration and the Court of Appeals for the

Thirteenth District held that the arbitration agreement was substantively unconscionable because it permitted Royston, Rayzor to recover fees and expenses in court, as opposed to arbitration, and the contract permitted the law firm to withdraw from representation at any time and recover costs and expenses of the divorce regardless of the outcome. *Id.* at 499-501. The case made its way to the Texas Supreme Court through interlocutory appeal and through Royston, Rayzor’s petition for writ of mandamus from the trial court’s denial of the motion to compel. The Texas Supreme Court denied the writ of mandamus, but heard the issue on appeal from the Thirteenth Court of Appeals. *Id.* at 499.

The most controversial part of the decision dealt with the interplay between Professional Ethics Opinion 586, interpreting Rule 1.03(b), and the favored enforceability of arbitration agreements. Ethics Opinion 586 states:

The [Professional Ethics] Committee is of the opinion that [Rule 1.03(b)] applies when a lawyer asks a prospective client to agree to binding arbitration in an engagement agreement. In order to meet the requirements of Rule 1.03(b), the lawyer should explain the significant advantages and disadvantages of binding arbi-



tration to the extent the lawyer reasonably believes is necessary for an informed decision by the client.

Id. at 503 (quoting Tex. Comm. on Prof’l Ethics, Op. 586, 72 Tex. B.J. 128 (2009)). Plaintiff Lopez contended the arbitration agreement violated public policy because a law firm must show it explained the advantages and disadvantages of arbitration to a prospective client such that the client could make an informed decision. *Id.* The Texas Supreme Court rejected the argument that an attorney’s failure to explain an arbitration agreement to a prospective client rendered the arbitration agreement unenforceable. The court’s reasoning rested on the Texas Legislature’s statutory directive that arbitration agreements, even those between attorneys and clients, be treated as other contracts. *Id.* (citing Tex. Civ. Prac. & Rem. Code § 171.001). While Disciplinary Rules may inform public policy, according to the court, it cannot alter the legislative expression of the enforceability of arbitration agreements. Thus, (con’d on p. 7)



Restaurant Review: Pharm Table

By Shari Mao

Does your palate extend globally, but your conscience support locally? Do you find yourself wishing that a café exists downtown that was healthy and delicious? Look no further. Pharm Table, a new pop-up café in the Radius Center (106 Auditorium Circle across from the Tobin Center) may just satisfy your gastronomic cravings.

Chef Elizabeth Johnson combines colorful seasonal vegetables with optional protein additions (aka, meat), inspired with unique flavor profiles from around the world. Her dishes bring out the sweetness in vegetables, acidity in fruits and savoriness in beans, lentils and meats. My recent obsessions have included the Thai sprouted 'fried' rice with green lentils, house-made tofu, Brussel sprouts with chicken, and the low carb Laab Bowl with zucchini noodles, carrots, cherry tomatoes, mint basil and cabbage. I also love the

seasonal salads like the carrot, beet, watermelon radish, greens and pepita seeds salad with lemon cashew dressing. I had no idea what pepita seeds were, but now I am a fan. The taste of each dish is unique but familiar, simple yet satisfying. Round out your healthy lunch with a horchata pudding made with chia seeds, toasted coconut, cinnamon, nut milk and dates.

Do yourself a favor. Head to Pharm Table and treat yourself with a delightful warm bowl of winter squash moqueca soup followed by a healthy winter salad with local greens or some other seasonal goodies Elizabeth has created. The menu changes weekly, if not dai-



ly, so return frequently. Pharm Table is open for breakfast and lunch, Monday through Friday, 8 am to 3 pm. Dine in, call for a takeout order, or if you become a devotee, request for pre-made meals to be delivered weekly to your home.



Case Watch: *Royston, Rayzor* (con'd from p. 5)

the court declined to impose a public policy requirement that attorneys explain arbitration provisions to prospective clients in attorney-client employment agreements, recognizing that, “[p]rospective clients who enter such contracts are legally protected to the same extent as other contracting parties from, for example, fraud, misrepresentation, or deceit in the contracting process.” *Id.* at 504 (citing Tex. Civ. Prac. & Rem. Code § 171.001). The court did not address whether *Royston, Rayzor*’s conduct violated an ethical obligation to the client under Disciplinary Rule 1.03(b). *Id.* Justice Guzman filed a concurring opinion, joined by Justices Lehrmann and Devine, emphasizing the need for more clarity in rules governing attorney professional conduct in entering into attorney-client arbitration agreements. Justice Guzman recognized that, “[a]rbitration agreements between attorneys and their clients are not inherently unethical,” *id.* at 507, but also suggested that “an attorney has an ethical responsibility to fully and fairly discuss an arbitration agreement with a client.” *Id.* Given the potential for abuse and confusion at the earliest stage of an attorney-client relationship, guidance from attorney professional rules is “essential.” *Id.*

The Texas Supreme Court also rejected Lopez’s arguments that the arbitration agreement was unenforceable because it was substantively unconscionable and illusory due to its purported one-sidedness. The court agreed

with the court of appeals that a party can prevail on an unconscionability defense by showing either procedural or substantive unconscionability, or both, but a showing of both procedural and substantive unconscionability is not required. *Id.* at 502. The court reiterated the principle that “arbitration clauses in attorney-client employment contracts are not presumptively unconscionable.” *Id.* at 500. Thus, the court disagreed with the court of appeals’ holding that Lopez did not have an evidentiary burden to prove the unconscionability defense. The court held that a party relying on this defense to escape an arbitration agreement has the evidentiary burden of proving the substantive or procedural unfairness of the contract and that Lopez’s “evidence” consisted of the language of the contract.

Turning to the contract terms, the court of appeals held that it was substantively unconscionable for three reasons: (1) it gave the law firm the right to withdraw as counsel at any time; (2) it facially favored the law firm by giving it the right to litigate claims for fees and expenses while relegating Lopez to arbitration; and (3) it provided that Lopez would be responsible for all costs and expenses regardless of the outcome of the underlying divorce. *Id.* at 500-01. The Texas Supreme Court held that the first and third considerations were not proper considerations for determining the substantive fairness of the arbitration agreement,

because they relate to the contract as a whole. *Id.* at 501. Challenges to the enforceability of an arbitration agreement must be directed specifically to the arbitration provisions. *Id.* at 501. With respect to the second consideration raised by Lopez as evidence of unconscionability, the court noted that “an arbitration agreement is not so one-sided as to be unconscionable just because certain claims are excepted from those to be arbitrated.” *Id.* The court disagreed with Lopez’s interpretation of the contract that it allowed the law firm to choose whether to litigate or arbitrate the only claim it would realistically have against him, while forcing him to arbitrate all claims against it. Instead, the court held that the contract required that all claims by both parties be resolved by arbitration, except for one class of claims, those for fees and expenses. For those claims, according to the court, the law firm did not have a unilateral choice whether to arbitrate or litigate, instead they were excluded from the arbitration agreement and the firm must litigate those claims absent some other agreement. *Id.* at 501. Thus, the court held the arbitration agreement was not substantively unconscionable.

Finally, the court rejected Lopez’s argument that the arbitration agreement was illusory because it did not require the law firm to arbitrate the only possible claim—that for fees and expenses—it could have against him. An arbitration agreement is illusory if it (con’d on p. 9)

Judicial Spotlight: Judge David A. Canales



Judge David A. Canales has presided over the 73rd District Court in Bexar County since January 2013.

Why did you decide to become a lawyer?

Ever since I was a child, I aspired to be a problem solver. I firmly believed that a solution could be found for every predicament no matter how big or small. I quickly came to realize how much I enjoyed helping others and how personally satisfying it could be. During my teenage years, my mother retained a lawyer for legal services and she introduced me to him. He was kind and encouraged me to learn about the law and the justice system. He explained how as an attorney he was in a

unique position to help people every day on complicated issues. His words stayed with me. I eventually clerked for him and I fell in love with the law! From that point on, I turned the law into my professional career and strive to inspire others to do the same

Who are the people who have had the greatest influence upon your legal career?

I have been incredibly blessed to have my wife, Cecilia, encourage me to pursue my career in the law and stand faithfully by my side. My first boss in the legal community, now County Court at Law Judge in Hidalgo County, Arnoldo Cantu, Jr., was and remains a mentor and friend. Several professors in law school pushed and challenged me—Professors Ana Otero and Lupe Salinas, and Dean Dannye Holley. When I worked at Sidley Austin in Chicago, John Mejia, now Legal Director of the ACLU of Utah, mentored me as a young associate. I joined the San Antonio legal community in 2008 and many lawyers gave selflessly of their time and experience to help me - Sue Hall, Andrew Ramon, Fernando Cruz, Sonia Rodriguez, Javier Espinoza, Omar Alvarez, and Regina Scrivner-Tibbs. On the bench, all of my judicial colleagues have positively influenced me;

however, retired Judges Janet Littlejohn and Martha Tanner and current Judges Larry Noll and Richard Price have gone above and beyond in helping smooth my transition from attorney to judge. Finally, I am eternally grateful to God for His wisdom and His daily guidance.

What are you most proud of so far in your legal career?

I am gratified to have graduated as the Valedictorian of my law school class at Texas Southern University, Thurgood Marshall School of Law, with summa cum laude honors. I worked tirelessly and diligently to achieve that measure of academic success. I did so as my wife and I raised our 2 oldest boys (who were our only children at the time) and while I was intricately involved with several extracurricular programs in school for our children. As a result, I secured a job as an associate attorney at a prestigious downtown Chicago law firm.

What tips can you give other lawyers interested in becoming a judge?

First of all, judges are expected to conduct themselves professionally and above reproach. To that end, if a lawyer wants to become a judge, I urge that she or he work to build a (con'd on next page)

Judicial Spotlight: Canales (con'd from p. 8)

reputation of professionalism, candor and integrity. Community involvement is also very important. It is another avenue where a lawyer can volunteer, donate and contribute time, money and other resources to help others. Finally, seeking an elected judicial position requires a time commitment that can and will contribute to many stresses including emotional and financial ones. Before running for office, one should be prepared to deal with these additional pressures and understand that these can also affect one's

family and loved ones.

What are you looking forward to the most during your time on the bench?

I am enthusiastic to be co-chairing the Community Justice Program in San Antonio with Judge Lisa Jarrett (of the 436th District Court) beginning 2016! The CJP, together with the Texas RioGrande Legal Aid, is a mechanism for providing legal services to the indigent in the San Antonio area. The program was established in 2002 by Justice Phylis Speedlin and Judge

Karen Pozza (of the 407th District Court) and it is presently co-chaired by Judge Jarrett and Judge Larry Noll (of the 408th District Court). They have done a phenomenal job leading this program and I look forward to continuing their good work. Judge Noll's retirement at the end of his present term in 2016, has provide me the opportunity to follow in his footsteps. They are tremendous shoes to fill and I pledge to do my best to continue growing the CJP in our area and community.

Case Watch: *Royston, Rayzor* (con'd from p. 7)

fails to bind the promisor by allowing one party to choose whether to arbitrate while binding another party to arbitration. *Id.* at 505. But this contract did not permit *Royston, Rayzor* to choose whether to arbitrate or not, according to the court. Rather, it relegated one class of claims—those for fees and expenses—to litigation, and required arbitration of all other claims. Those mutually binding

promises, as well as the underlying contract, provided sufficient consideration for an enforceable contract. *Id.* at 506.

Royston, Rayzor means that arbitration agreements between attorneys and clients will likely be construed as enforceable even if the agreement excludes claims for fees and expenses, provided that the agreement does not give one party a choice to arbitrate, litigate, or unilat-

erally change the agreement to avoid arbitration. It also means that while there may be an ethical responsibility under Texas Disciplinary Rules to explain the advantages and disadvantages of an arbitration agreement to a prospective client, the failure to do so does not violate Texas public policy and will not render an attorney-client arbitration agreement unenforceable.

President's Column (con'd from p. 1)

I know many of my president's messages have been about gratitude, thankfulness, and joy, and I cannot adequately express to you how unbelievably grateful I am to have served as the president of this illustri-

ous organization. It has been an amazing experience that has brought me such joy and fulfillment. I cannot thank you enough for entrusting me with such awesome responsibility! It has been the best year ever!



**RAPE
CRISIS CENTER**

SERVING CHILDREN, WOMEN AND MEN

October 1, 2015

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Bexar County Women's Bar Association
Attn: Autumn Affair Chairperson
P.O. Box 1297
San Antonio, Texas 78268-2297

Dear Autumn Affair Chairperson:

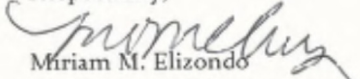
On June 17, 2014, The Rape Crisis Center (RCC) was selected as the beneficiary of the Bexar County Women's Bar Association, Autumn Affair 2014. The results of this successful event has moved our center closer to our goal of educating more youth on violence prevention. RCC has been providing services to this community for 40 years and every year the demand for our services increases. This past year, the increase was rapid and drastic leaving our counseling and hospital accompaniment services on a wait list. It is for this very reason, that our prevention education services are critical. Unless we expand our prevention education, we predict we will continue to see an increase sexual violence.

As the results of the dedicated work of the BCWBA, RCC was able to hire two part time prevention educators who completed our Office of Attorney General Certified training as well as a thorough 6 month prevention education training. Since their date of hire, Diego Mancha and Marisa Gonzalez, have worked with 746 youth. These are middle and high school aged youth who would not have had the opportunity to go through our 10 week primary prevention curriculum without your support. As of September 2015, we have expended \$17,718.41 for the two part time prevention educators and we expect to use the remaining balance form October 2015 until May of 2016.

Our center will continued to provide services to those who have already been impacted by rape and abuse, as long as needed; however, our overall vision is to STOP this from happening to anyone else. Thank you for supporting our efforts in ending sexual violence.

If there is any further information we can provide, please do not hesitate to contact us at 210-521-7273 or email us at melizondo@rapecrisis.com or mcheuvront@rapecrisis.com.

Respectfully,


Miriam M. Elizondo
Co-Executive Director


Mary Cheuvront
Co-Executive Director

7500 US Hwy 90 West, Building 2, Suite 201, San Antonio, Texas 78227
24-hour Hot line: (210) 349-7273 ~ Business: (210) 521-7273 ~ Fax (210) 521-7278
www.rapecrisis.com